



# COMPASSIONATE USE ACT & PUBLIC SAFETY EMPLOYEES

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A top-down view of a wooden desk. In the center is a black ashtray with a lit cigarette. To the right is a white coffee cup on a saucer. In the bottom right is an open notebook with a pen. On the left is a tablet and a keyboard. The text "LET'S LIGHT THIS UP..." is overlaid in white.

LET'S LIGHT THIS UP...





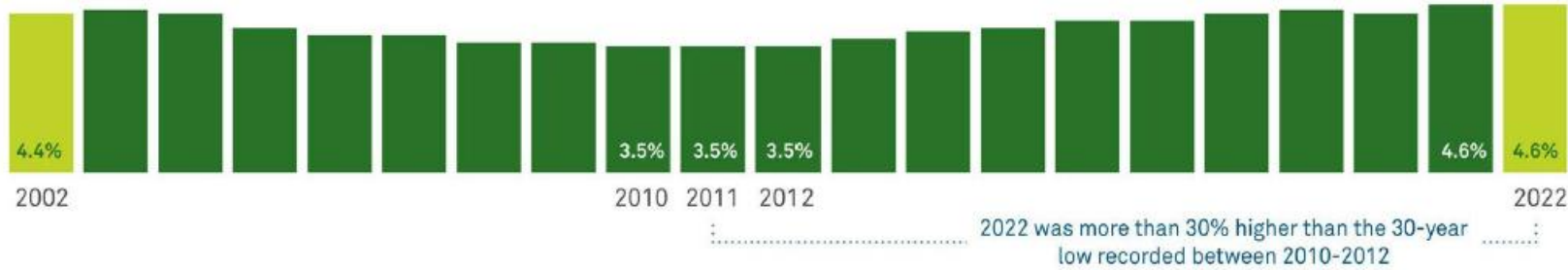
## How Can[nabis] we Regulate and Control Mary Jane at Work?

Do we have to be Compassionate to our Police and Fire Employees?

# 2023 Quest Diagnostics Drug Testing Index™

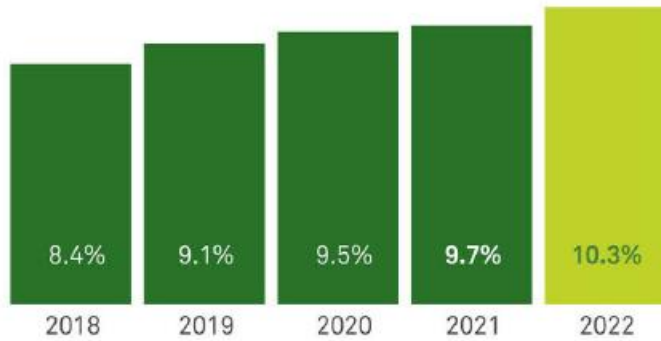
Based on more than 9.2 million combined U.S. workforce urine drug tests collected between January and December 2022

## Overall positivity rate in the combined U.S. workforce continues at its highest level in 20 years



## Post-accident positivity climbed over five years

For General U.S. Workforce



Based on more than 6.3 million tests from January to December 2022.

## % Difference between post-accident and pre-employment positivity rates for marijuana urine drug tests

For General U.S. Workforce, as a percentage of all tests for marijuana



Based on more than 6.3 million tests from January to December 2022.

# DRUG TESTING TRENDS



# US ADULTS SUPPORT LEGALIZATION

Percentage of U.S. adults who say marijuana should:

**59%**

Be legal for medical and recreational use

**30%**

Be legal for medical use only

**10%**

Not be legal

**1%**

No response



Research Center,  
2.

Additional  
Trends

# THC v. CBD & Hemp Too

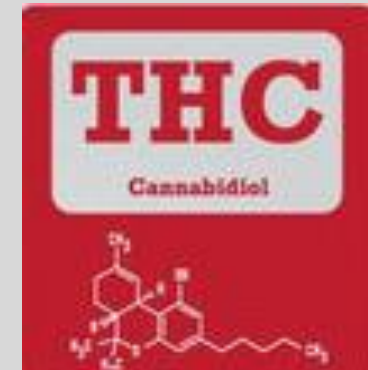
## CBD

- CBD Effects
  - Doesn't get you high
- May be useful if you have:
  - Alzheimer's
  - Bone Degeneration
  - Seizures
  - Neurodegenerative disorder
  - Tumors
  - Glaucoma
  - Arthritis
  - Vomiting and nausea



## THC

- THC Effects
  - Gets you high
- Decreases
  - Motivation
  - Cognitive ability
  - Neuronal connection
  - Creativity
- Increases
  - Breast cancer
  - Testicular cancer
  - Anxiety



## *Hemp*



## *Marijuana*



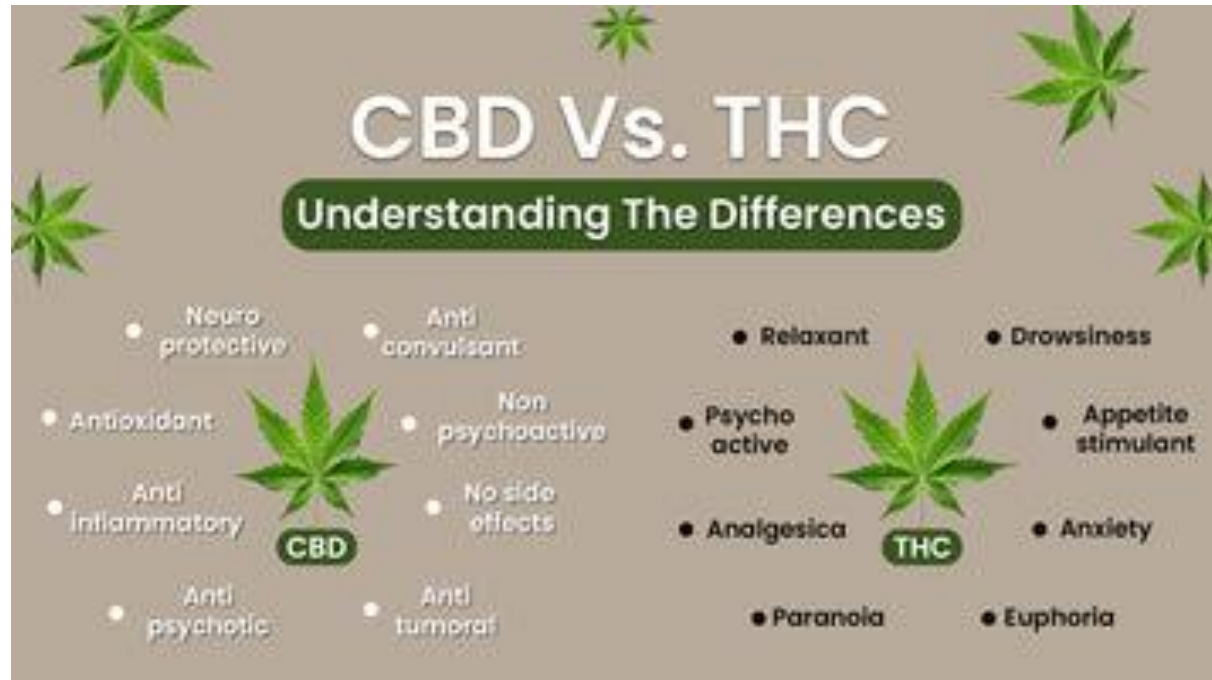
### *Did you know?*

Hemp and Marijuana are both cannabis sativa.

- Hemp is a classification of cannabis sativa plants with 0.2-0.3% THC.
- Plants typically grow tall- 4m or more and have long thin leaves.
- Hemp is used for a wide range of purposes and is also known as 'industrial hemp'.
- Contains high amounts of CBD and is used to create commercial CBD products.

- "Marijuana" refers to cannabis plants that contain high amounts of THC.
- "Marijuana" was coined in the 1900s as the stigma around cannabis grew, the term is widely used, but has controversial origins.
- Marijuana grows to approx 2m tall and has short and wide leaves.
- Typically used for recreational and medical use.

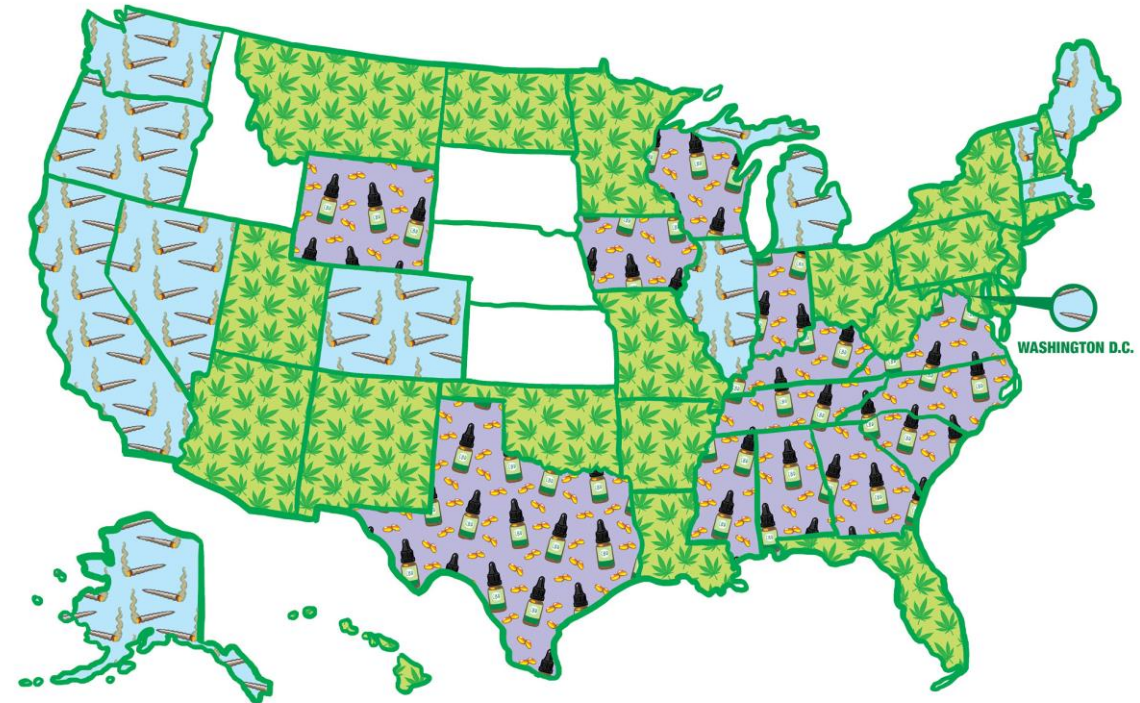
# THC v. CBD & Hemp Too







# UNDERSTANDING THE DIFFERENCE: IMPACT ON BODY



## MARIJUANA LAWS, STATE BY STATE



-  States that allow recreational and medical marijuana use
-  States with comprehensive medical marijuana programs
-  States that allow CBD or low-THC products
-  States with no public cannabis access program

# CBD and Hemp



Texas Health and Safety Code Chapter 443 (HSC 443), established by HB 1325 (86<sup>th</sup> Legislature) allows “Consumable Hemp Products” to be sold in Texas when the products **do not exceed .3% Delta-9 THC**.



All other forms of THC, including Delta-8 in any concentration, and **Delta-9 exceeding .3% are considered Schedule I controlled substances**.



Consumable hemp products with less than 0.3% Delta-9 tetrahydrocannabinol THC are permitted under Chapter 443 of the Texas Health & Safety Code.

The Texas Department of State Health Services recently updated its **consumable hemp** program guidance to **clarify that Delta-8 is not legal** by classifying Delta-8 as a Schedule I controlled substance

# The Laws

- The Mary Jane [aka Cannabis & Marijuana] Laws
  - **ILLEGAL**- Marijuana is **ILLEGAL**
    - This can be a reasonable basis for a marijuana free under the drug free workplace policy
    - CDL
  - Medical use of low-THC marijuana (or "cannabis" as it's called in the law) is **legal for patients** who participate in the Texas Compassionate Use Program (CUP)
    - Qualify: patients with certain conditions
    - Patients **must get a prescription** from a physician **registered** with the program.





# The Laws

- Laws regulating CUP
  - Chapter 169 of the Texas Occupations Code- patient qualifications
  - Chapter 487 of the Texas Health & Safety Code
- The Texas Department of Public Safety (DPS) oversees the program's administration and registration of physicians to dispense the medical marijuana.
  - Section 481.111(e)(2)  
<https://www.dps.texas.gov/section/compassionate-use-program/faq/compassionate-use-registry-texas-curt>
- Cannot bring a prescription from another state to fill it here



# The Texas Compassionate Use Act

- Enacted in 2015 by the Texas Legislature (SB 339)
- Requires DPS to create a secure registry of physicians to treat low tetrahydrocannabinol (THC) patients with specific medical conditions
- Compassionate Use Registry of Texas (CURT)
  - Controls prescriptions being used by one patient for different providers
- Accessible to law enforcement agencies and dispensing organizations to verify patients of low THC cannabis
- "Low-THC cannabis" means the plant *Cannabis sativa* L., and any part of that plant or any compound, manufacture, salt, derivative, mixture, preparation, resin, or oil of that plant that contains not more than one percent by weight of tetrahydrocannabinols.
  - Tex. Occupations Code §169.001(3)



# Expansion of the Compassionate Use Act

Covered conditions originally included incurable neurodegenerative diseases such as:

- Muscular dystrophy
- Epilepsy
- Parkinson's Disease
- 2019 – terminal cancer

2021 Legislative Update (HB 1535)

- epilepsy
- a seizure disorder
- multiple sclerosis
- spasticity
- amyotrophic lateral sclerosis
- autism
- cancer [any type]
- post-traumatic stress disorder
- an incurable neurodegenerative disease
- designated research program & receiving treatment in that research



# Expansion of the Compassionate Use Act (2021)

See Texas  
Occupations  
Code Section  
169.003:

Full list at 25 TAC  
§ 1.61

Increases  
Maximum THC  
level to 1% by  
weight

Evaluate and  
approve research  
programs to study  
medical use of  
low THC with  
institutional  
review boards

# What can employees use and how?

- Low THC - Medical Use for ingestion with a prescription - **NOT SMOKING**
  - Tex. Occupations Code § 169.001(4)
- Doctor must register and employees must have the prescription from the registered physician with the CUP
- Doctor determines the risk of the medical use of the low THC & benefit to the patient
  - See Tex. Occupations Code § 169.003(b)
- Treatment Plan Required
  - Doctor must have a treatment plan for the low THC with
    - Dosage, how to administer, planned duration of treatment
    - Monitoring the patient's symptoms
    - Plan for indicators of tolerance and monitoring
- This differs from the definition of "hemp" in Section 121.001 of the Texas Agriculture Code, which defined cannabis plants and derivatives consisting of less than .3% tetrahydrocannabinols by weight.

# What can employees use and how?

- The Compassionate Use Act does not contain any protections for qualifying patients who treat their conditions with marijuana.
- Absent a new state law addressing an employer's ability to screen for marijuana, refuse to hire medical marijuana patients, or fire employees who test positive for marijuana, employers may be free to do as they see fit.

However, qualifying patients can currently **only purchase low-THC** cannabis products containing .5 percent THC or less.

The qualifying conditions under the Compassionate Use Act include:

- Amyotrophic lateral sclerosis
- Autism
- Epilepsy
- Incurable neurodegenerative disease
- Multiple sclerosis
- Seizure disorders
- Spasticity
- Terminal cancer

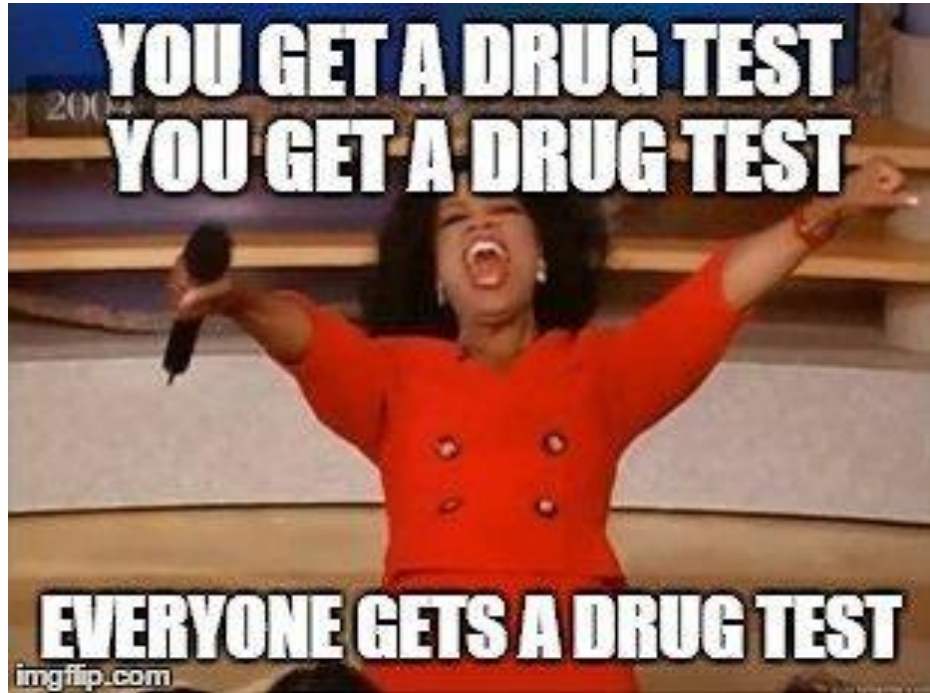
Additionally, the maximum amount of THC available in medicinal cannabis products increased from 0.5% to 1%.

**While this is still a very low THC content (most strands of marijuana have a THC content between 10 and 20 percent) = increase in THC = increase in positive drug tests!**



How much pot have you smoked?





# Drug Testing: Public Safety/First Responder Employees

4<sup>th</sup> Amendment Search & Seizure – restrictions on unreasonableness

Employee Consent



Types

Pre-Hire

Random

Reasonable  
Suspicion

•Post Accident

# Pre-Hire

In your policies

Consent, document, explicit procedures

Conditional offer of employment

Disability accommodation on testing or application

# Random Testing

In your policies

Safety sensitive or DOT  
Positions

Police are not considered  
safety sensitive





# Reasonable Suspicion

Observations of impairment

Witnesses by supervisors [co-workers are ok if reported to supervisors]

Escort to testing site

Post- Accident testing: Accidents with or without injury can count for reasonable suspicion

- Consider determining fault or negligence in determining testing
- Backing up accident vs. Stationary vehicle someone else hit

THC vs CBD- Testing DOES NOT distinguish these

- Cumulative effects
- May be inferred by levels
- Cannot distinguish between legal vs illegal use
- Likely a positive drug test

Its up to YOU as a policy decision

# First Responders – Can't use Mary Jane, can they?

Zero tolerance drug testing policy?

What about off duty use?

What is your tolerance for First Responders/Safety Sensitive use?

- CBD - can result in positive drug test
- Low THC- prescribed; still positive drug test

Job Descriptions/Policies for No Use Before Shift

Fitness for Duty –

- Personnel or Internal Department Policies
- Job related and consistent with business necessity
  - Undue burden or threat to self or others safety
- Civil Service Chapter 143
- CBA/Meet & Confer

FMLA & ADA Considerations

Federal Grant recipients under Federal Drug Free Workplace Act

On or Off Duty Use





# Safety First!

- TCOLE requirements for L-2
- Telecommunicators too!
- Its positive! What to do with a First Responder Tests Positive?
  - No discipline IF
    - No impact to anyone's safety
    - Allowed/Compliance under CUP Policy
  - Is allowing a first responder to use THC while on duty reasonable?
    - Can't just blanket policy though...ADA still applies
- Safety of the Public First!



# Don't Forget the ADA!

## Disabilities

- Medical or physical impairment that limits or affects a major life activity
- Sleeping, walking, thinking, eating, interacting with others, PTSD
  - PTSD Symptoms
    - Insomnia, startled easily, difficulty concentrating, irritability, aggression

## Accommodations: THC or CBD Use

- Risk tolerance for First Responders

# Disability & Interactive Process\*

\*[not just First Responders]

- Request for accommodation = Interactive Process
- If you think something is going on- you can ask and engage in interactive process [ie: don't wait for them]
- Interactive Process?
  - Job description
  - Essential functions
  - Restrictions and limitations
  - Ongoing process with the employee
  - Document everything
- Not any accommodation – a reasonable accommodation- not the best or one requested
  - What about Finance?
  - What about Public Works?
  - What about the receptionist?

# Disability & Interactive Process\*

- Undue Hardship
  - Very specific analysis with documentation
  - Reasonably accommodate cause significant difficulty or expense
  - Factors according to the EEOC:
    - the nature and cost of the accommodation needed;
    - the overall financial resources of the facility making the reasonable accommodation; the number of persons employed at this facility; the effect on expenses and resources of the facility;
    - the overall financial resources, size, number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity);
    - the type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employer;
    - the impact of the accommodation on the operation of the facility.



- Identify Safety-Sensitive positions or jobs where regulations are federally mandated
- Disability: Interactive process
- Get documents for the prescription from the Compassionate Use Registry of Texas: NOT just a doctor note or regular prescription
  - <https://curt.dps.texas.gov/app/public/searchPhysician.xhtml>
- Evaluate what is reasonable/what are your thresholds?
  - Police
  - Fire
    - CDL
  - EMS
  - Safety Sensitive
  - Administrative employees
- Be clear in your policies



# CUP Policy Elements



- Qualifying Medical Conditions
- Registered Patients under CUP
- Disclosure & Confidentiality
- Documentation Required
  - HR Assessment
- Fitness for Duty
- Prohibited Conduct
- Compliance w/ Relevant Codes & Policies
- Accommodation/Interactive Process
  - No impairment/Performance Impact
- Drug Testing Policy-
  - Do you want to “let” them tell you about CBD or other hemp uses not under CUP?
  - CBD v. CUP
  - Understand drug testing and outcomes
  - Discipline or Disability [EAP]

# Questions?

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